

IN THE HIGH COURT OF JUDICATURE AT JABALPUR(M.P.)

W.P. NO. 388 of 1998. 1999

Petitioner:- GAJANAND THAWAIT, Aged about 45 Years,
Son of Dr. D.P. Thawait, R/O Dayalbund,
Near Gurudwara-Dayalbund, Tahsil and
District Bilaspur(M.P.)

Versus

- Respondents:-
1. Bharat Earth Movers' Ltd.,
(A Govt. of India Undertaking)
Through its Managing Director,
Soudha, 23/1, 4th Main, S.R. Nagar,
Bangalore-560 027.
 2. The Director(Marketing)
Bharat Earth Movers Ltd.,
Soudha, 23/1, 4th Main, S.R. Nagar,
Bangalore-560 027.
 3. The Managing Director,
Bharat Earth Movers Ltd.,
Soudha, 23/1, 4th Main, S.R. Nagar,
Bangalore-560 027.
 4. The Regional Manager,
Bharat Earth Movers Ltd.,
Sirigitti, BILASPUR(M.P.)

Petition U/A 226/227 of the Constitution of India
for issuance of Writ of Certiorari, Order or Direction
in the nature of Writ of Mandamus/Quo Warranto Etc.

APR

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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.388 of 1999

Gajanand Thawait

Vs.

Bharat Earth Movers Limited and others

JUDGMENT

Post for 16.08.2005

Sd/-
Sunil Kumar Sinha
Judge

PS Koshiy
16-08-05

16/8/2005

APR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.388 of 1999

Gajanand Thawait

Vs.

Bharat Earth Movers Limited and others

Shri H.B. Agrawal, Sr. Advocate with Ku.Sangeeta Mishra,
counsel for the petitioner.

Shri P.S. Koshy, counsel for the respondents.

JUDGMENT
(16.8.2005)

Sunil Kumar Sinha, J.

(1) By way of this writ petition, the petitioner has challenged the legality of punishment order dated 29.9.1992 passed by the disciplinary authority, whereby the petitioner was removed from the services under clause 22.2 (iii) of the standing orders of the respondent-Company. He has also challenged the validity of appellate order dated 16.10.1998 passed by the appellate authority on an appeal filed by the petitioner against the aforesaid punishment imposed in the departmental enquiry.

(2) The brief facts are that the petitioner was working as Store Clerk in Bharat Earth Movers Limited, hereinafter referred to as the BEML, which is a Government of India Undertaking, in its service center at Sirigitti, Bilaspur. He was served with a charge sheet dated 10.10.1991 alleging that on 04.10.1991 at about 5 a.m., he was caught by the Police in Bilaspur, alongwith certain

spare parts belonging to B.E.M.L. Stores being carried away by him unauthorisedly. It was further alleged that due to the said act, the petitioner was taken into custody until he was released on bail and a criminal case was registered against the petitioner for the charges of theft. The spare parts, carried by the petitioner were identified by the B.E.M.L. officers. It was also alleged that the petitioner was having no authority to carry these articles nor any permission was granted to him to carry these spare parts from B.E.M.L. Stores, Bilaspur and the above act of the petitioner amounted to misconduct under Clause 21.39 of the Standing Order of the Company and for this, a reply was sought from him.

(3) The petitioner filed his reply pleading his innocence and challenging the validity of the charge sheet on certain grounds. Thereafter, he also challenged its validity in M.P.No.1249/1992 before the High Court of Madhya Pradesh, Jabalpur on the grounds that the charge sheet was not issued in prescribed format and the names of witnesses who would prove the charge of alleged theft have not been disclosed, the spare parts alleged to have been stolen are not specified, the period and time when the said theft took place are also not mentioned, therefore, the charges are vague and no punishment on the basis of the said charges can be awarded to him. The Division Bench of the M.P. High Court disposed of the aforesaid petition on 16.04.1992 by passing an order that the Company shall first issue a charge sheet in the prescribed format with all necessary documents and list of

witnesses to the petitioner and then shall proceed with the enquiry.

(4) Thereafter another charge sheet was issued to the petitioner on 03rd of June 1992. This was a detailed charge sheet containing 4 charges giving particulars of items missing from the stores and also the articles said to have been stolen and found in possession of the petitioner by the police on 05.10.1991. The charge sheet further includes the list of the documents to be relied upon by the management and the list of the witnesses to be produced for proving the charges. A reply was filed by the petitioner and thereafter an enquiry committee was appointed and the petitioner was also asked to take the assistance of a co-worker in the enquiry proceedings proposed to be conducted against him. This was communicated to the petitioner vide letter dated 14.7.1992.

(5) After receiving the aforesaid communication, the petitioner moved an application dated 22.7.1992 (Annexure P-7) demanding certain documents for the purpose of his defence. In addition to it, he also prayed for appointment of one Shri R.P. Singh, Assistant Grade-I (M), Food Corporation of India, Bilaspur, as the defence assistant to assist him in the departmental enquiry before the Committee. Later on he further gave a reminder dated 29.7.1992 (Annexure P-8), repeating the same prayer for appointment of said Shri R.P. Singh as his defence assistant. Thereafter, another application dated 29.7.1992 (Annexure P-9) was filed by the petitioner making allegations that since the documents demanded by him were not supplied to him he would not be able to cross

examine the management witnesses, therefore, the enquiry be adjourned in the interest of justice. However, the enquiry commenced and the prayer for supply of these documents and also for appointment of Shri R.P. Singh of the F.C.I. were disallowed. During the course of enquiry, firstly on 29.7.1992, the management examined Shri P. Pavana Murthy, Senior Manager (Stores) and Shri D. Umesh Bhatt, Assistant Manager. The petitioner alleges that during the cross examination of Shri Pavana Murthy, the petitioner asked certain questions being relevant to the facts in issue, but the questions so asked by the petitioner were disallowed by the Committee in arbitrary manner. The petitioner submits that in the said situation he filed an application dated 29.7.1992 (Annexure P-10) but the same was also disallowed. Being aggrieved with the aforesaid action of the enquiry committee, the petitioner thereafter did not participate in the proceedings of the entire enquiry. It appears that on 30.7.1992 when the petitioner did not turn up to the proceedings of the enquiry, he was proceeded ex-parte and other two witnesses who were not listed were proposed, allowed and examined behind the back of the petitioner and ultimately the enquiry report was submitted on 13.8.1992. The petitioner was held guilty of charges of misconduct under clause 21.39 of the certified standing order.

(6) Concurring with the findings recorded by the enquiry committee, the disciplinary authority served the petitioner with a notice of proposed punishment on 28.8.1992 which was replied by the petitioner on 15.9.1992. The disciplinary authority thereafter

passed the impugned order of punishment on 29.9.1992. Against the aforesaid orders passed by the disciplinary authority, the petitioner filed an appeal before the appellate authority but when the aforesaid appeal was not decided for a long period, a writ petition had to be filed by the petitioner before the M.P. High Court in which an order dated 23.3.1998 was passed and a direction was issued to the appellate authority to take a decision on the pending appeal of the petitioner within an outer limit of 3 months from the date of receipt of copy of this order. After passing of the said order, the appellate authority decided the appeal of the petitioner by an order dated 16.10.1998. It is against these orders of the disciplinary authority as well as the appellate authority, the petitioner has filed this writ petition.

(7) Learned counsel for the petitioner submits that the order of the disciplinary authority vitiates as the same has been passed on the basis of an enquiry report in which the petitioner was not afforded due opportunity of hearing and the enquiry was conducted in utmost violation of fundamental principles of natural justice. He raises the following points:

- (1) The copies of relevant documents demanded by the petitioner were not supplied to him ;
- (2) Shri R.P.Singh, of Food Corporation of India, who was proposed to be appointed as the defence assistant of the petitioner was not appointed by the Committee ;
- (3) The various important questions were disallowed by the committee while cross examination of the witness namely P.Pavana Murthy ;

- (4) For all these reasons the petitioner did not participate in the further proceedings of the enquiry and he could not cross examine the other witnesses examined by the management ;
- (5) Some other witnesses who were not mentioned in the charge sheet were allowed to be examined behind the back of the petitioner after proceeding ex-parte against him.

In addition to above, he also submits that almost on the same set of evidence, the petitioner has been acquitted on 23.06.1997 in criminal case, therefore, he should also be exonerated in the departmental proceedings and his petition may be allowed.

(8) On the other hand, learned counsel for the respondents submits that the enquiry was conducted in a fair and proper manner. The petitioner was given the copies of relevant documents on which the charges were framed and which were relied in the charge sheet. The documents which were further demanded by the petitioner were not the relevant documents for the purpose of this enquiry, therefore, they were rightly refused. The appointment of Shri R.P. Singh of F.C.I., as the defence assistant was also rightly refused as a person of different department was not to be appointed as the defence assistant under the specified standing order. So far as the questions in cross examination are concerned, the petitioner was given full opportunity to ask all relevant questions from the witness Shri P.Pavana Murthy. The objection was baseless and the same was rightly dismissed. The petitioner remained absent from enquiry even after due notice to him, therefore, he cannot blame on this count also. Regarding examination of two additional witnesses

behind the back of the petitioner after exparte proceeding, learned counsel submits that after their examination the petitioner was duly informed but he did not turn up to the enquiry. He further submits that there is no violation of principles of natural justice and the grounds raised by the petitioner are baseless and unsustainable. So far as the criminal case is concerned, learned counsel submits that the findings of the criminal case are not binding on the proceedings of the domestic enquiry as both the proceedings are of independent nature. The acquittal in the criminal case will serve no purpose in favour of the petitioner so far as the result of this departmental enquiry is concerned.

(9) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

(10) Firstly, I am taking the grounds relating to violation of natural justice. The apex Court in the matter of Swadeshi Cotton Mills -Vs- Union of India etc., etc., AIR 1981 S.C. 818 has discussed at length the meaning of natural justice and observed that "the phrase is not capable of a static and precise definition. It cannot be imprisoned in the strait-jacket of a cast iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth", *Natural Justice by Paul Jackson, 2nd Ed., page 1*. In course of time, Judges nurtured in the traditions of British Jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience." Legal experts of earlier generation did not draw any distinction between "natural justice"

and "natural law". "Natural Justice" was considered as "that part of natural law which relates to the administration of justice."

It is said, "justice being substantially on natural ideals and human values, the administration of justice is here freed from the narrow and restricted considerations which are usually associated with a formulated law making linguistic technicalities and grammatical niceties. Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules.

(11) Regarding non-supply of the documents, while dealing with the matter of **Chandrama Tewari -Vs- Union of India, AIR 1988 S.C. 117**, the Apex Court held that "It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges, or if such document or material was not necessary for the cross examination of witnesses during the enquiry, the officer cannot insist upon the

supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer."

Non supply of the copies of documents which are not relevant and which have no bearing on charges or which are not relied upon by the enquiry officer to support the charges does not amount to violation of principles of natural justice.

(12) If, on these principles, we examine the case of the petitioner regarding non supply of the demanded documents, it would appear that the petitioner filed his application for supply of some documents on 22.7.1992 vide Annexure P-7. The contents of this application would show that the petitioner had demanded for Attendance Register of the Security Guard on duty on 03.10.1991 and 04.10.1991. He had also demanded Attendance Register of the labour attached to store section on 03.10.1991. He had further demanded for the Outward Register maintained by the security Guard at the main gate for the period from 01.01.1991 to 05.10.1991 and C.C.Note Register showing the date-wise receipt of consignment and its issue in the spare-parts depot, Bilaspur during the period 01.1.1991 to 07.10.1991. The petitioner had also demanded the Rules/Procedure/Instructions of BEML Headquarters, Bangalore regarding maintenance of accounts of receipt of consignment, its storage and disposal and the Letter/memos issued to him by the Assistant Manager and Senior Manager calling for explanation for disobedience of their orders and lastly the instructions of BEML Headquarters, Bangalore regarding lodging of FIR with the Police in the event of theft cases.

(13) None of these documents are part of the charge sheet nor they are mentioned as the documents to be relied upon by the management to establish the charges leveled against the petitioner. Page 3 of the charge sheet would show that the management had relied upon the First Information Report (FIR) lodged in the Police Station and had also relied upon the attendance register of the Store and the copies of these documents have been handed over to the petitioner. It appears that the petitioner had demanded these documents to show his innocence regarding the shortage of spare parts in the store of BEML. It appears from the charge sheet that as per Charge No.3 as many as 14 articles were found to be missing to which the petitioner had to explain. In his reply to this charge dated 13.6.1992 the petitioner had not stated that the allegations of missing of those articles from the store are false. He himself has made various allegations against the persons of the department, denying this charge. Not only this, in reply to charge no.4, which relates to the above 14 articles found in possession of the petitioner by the Police, the petitioner had not specifically denied that these articles were not found in his possession or he was not carrying the same. He has only stated that under a pre-conceived plan in collaboration with the vested interests the Chakrabhata Police has falsely implicated him and registered a case u/s 380 and 457 IPC. The petitioner had stated in his own words that *"since the case is still pending in the Court of Law I have nothing to say for the present in the matter"*. He had further stated that in connection with this charge, the management has proposed to rely upon only two documents listed in Charge sheet dated

03.6.1992, therefore, he was inclined to believe that no additional document will be used in this case and if other documents are used it should be disclosed as per the orders of the High Court. It appears from this reply that the documents demanded by the petitioner vide his application dated 22.7.1992 are of no relevance in the matter. The main charges leveled against the petitioner were the charges of theft which were on the ground of finding him in possession of 14 articles of the Company by the Police which were specified in the Charge Sheet and for denying the same or for disowning the possession thereof how these documents are relevant were not disclosed by the petitioner. The other documents demanded by him were the various instructions or the letters or the rules of the BEML, which are also not mentioned in the charge sheet nor the same were proposed to be used against the petitioner. If the documents are not used against the petitioner, the ground of violation of principles of natural justice is not attracted. In the matter of non-supply of documents, the violation of principles of natural justice is attracted only when a document demanded is used or proposed to be used in recording the finding of guilty against him. On the basis of the authority referred to above, it would be clear that the application to supply the copies of documents is confined only to "material" and "relevant" documents and the enquiry would be vitiated only if the non-supply of material and relevant documents, when demanded, may have caused prejudice to the employee. The petitioner may plan to set up any defence to defend his charges before the disciplinary authority, but he may not be permitted to make a demand for the

sake of its denial and say that it has prejudiced his case. If the document is not a "material" or "relevant" document and the same has not been used against the petitioner, it cannot be said that the refusal to supply copies of those documents has vitiated the enquiry. In the application (Annexure P-7) none of the documents are relevant or material documents as per the defence of the petitioner, therefore, the denial of supply of copies of these documents does not violate the principles of natural justice. The enquiry committee has also dealt with this aspect in the note sheet dated 29.7.1992 (Page 45 of the Paper Book) by considering that the documents required by the petitioner are not indicated in the charge sheet dated 13.6.1992 and as and when the evidence is recorded during the proceedings and the prosecution submits any document before the enquiry committee, the copies will be given to the petitioner to enable him to defend his case.

(14) Now I shall take the ground regarding refusal to appoint Shri R.P. Singh, Assistant Grade-I, of the Food Corporation of India as the Defence Assistant in this case. The petitioner vide Annexure P-7 in its latter part, has requested that after the best efforts, he could not find a single person in BEML, Bilaspur who could assist him in this enquiry and for this reason he has proposed the name of Shri R.P. Singh who was an employee of Food Corporation of India. This prayer has been rejected by the disciplinary committee on 29.7.1992. It has been explained that according to the standing order applicable in case of the petitioner, he can only take the assistance of a workman or an office bearer of

B.E.M.L/B.E.M.L S.A., therefore, assistance from an employee of the food corporation of India was not permitted. In the opinion of this Court if the relevant rules / standing order applicable in this case does not permit for appointment of defence assistant from another department, then refusal of such request of the petitioner by the disciplinary committee was justified. This will also not violate the principles of natural justice and the disciplinary committee seems to have taken a correct view in this matter.

(15) Now taking into consideration about not allowing the important questions during the cross examination of Shri P. Pavana Murthy, it would appear that Shri Pawana Murthy was cross examined at length by the petitioner and after finishing his cross examination it is mentioned in the deposition sheet as under:

"Shri Gajanand Thawait has stated that he has nothing more to ask to Shri P.Pavana Murthy, Senior Manager in cross examination"

After recording this statement, re-examination was again done which was marked as "Nil" and thereafter it was read over, translated in Hindi and marked as "admitted to be correct". This deposition sheet bears the signature of Shri Gajanand Thawait (Please see Page 48 of the Paper Book). On the face of this document, which has been filed by the petitioner himself in this court, I am of the opinion that the enquiry Committee has rightly rejected the aforesaid objection contained in Annexure P-10 filed by the petitioner after completion of cross examination of this witness. The decision of the Committee on this application has been recorded at Page No.8 of the continuation sheet of the

proceedings which is filed at Page No.52 of the paper book. It appears to me that this application was a creature of an after thought and was filed for the sake of objection to show that full opportunity of cross examination was not given in this matter. Otherwise, there was no reason with the petitioner to make such statement after completion of the cross examination of Shri Pavana Murthy and to put his signature on the deposition sheet of that day making such a declaration. I am not inclined to accept this argument advanced by learned counsel for the petitioner that rejection of application amount to violation of principles of natural justice because it is not established on record that such questions were put and were arbitrarily rejected by the enquiry committee.

(16) Now next point I am taking about non participation of the petitioner in the departmental enquiry. If we examine the proceedings of 29th July 1992, it would appear that after finishing the cross examination of Shri Pavana Murthy and after completion of the examination-in-chief of Shri D.Umesh Bhatt, the aforesaid objection of the petitioner was disposed of and the proceedings of the Committee was adjourned for 30.7.1992 at 9.00 a.m. This proceeding bears the signature of all the concerned persons except the petitioner. Then it was again recorded that Gajanand Thawait refused to sign the proceedings and walked out of the enquiry committee meeting. Thereafter another set of signature of all the members are there. This goes to show that the petitioner was having full knowledge of the date and time of the adjourned proceedings and he was required to appear before the enquiry

committee on 30.7.1992 at 9 a.m. It appears that on the said date the petitioner did not appear and the enquiry was completed in his absence. Now the question arises as to whether the absence of the petitioner on the subsequent date of enquiry was justified or not ? If the petitioner was having the knowledge of the adjourned date and time of the enquiry by participating in the enquiry of 29.7.1992, in all fairness the petitioner was required to appear on the subsequent date and to participate in the proceedings. If the petitioner was unable to attend the proceedings for any sufficient cause beyond his control, he would have informed the same to the enquiry committee and should have prayed for an adjournment. This all has not been done by the petitioner. On the contrary, he refused to sign the last order sheet dated 29.7.1992 and had chosen not to appear and participate in the further proceedings of the enquiry. This conduct of the petitioner shows that he had determined not to participate in the enquiry and had willfully caused his absence on 30.7.1992 and on subsequent date of enquiry. It is in this situation, the further proceedings of enquiry were conducted in absence of the petitioner and thereafter, an enquiry report was filed. In the facts and circumstances of the case, since the petitioner did not participate in the proceedings of the enquiry on his own will even after knowing about the adjourned date of hearing and after refusing to sign the note sheet, I do not find that the petitioner can raise the grounds of violation of natural justice after a willful non-cooperation in the enquiry.

(17) The last ground which learned counsel for the petitioner argues about the violation of natural justice is that two witnesses namely R.K. Chauhan, Ex-Subedar and Lakshman Prasad, Security Guard were not listed as witnesses in the charge sheet and the enquiry committee recorded the statements of these witnesses behind the back of the petitioner after proceeding exparte against him. I have gone through the charge sheet. It is correct that these two witnesses were not listed in the charge sheet. The enquiry report vide para 14 shows that after examination of 3 listed witnesses, the presenting officer had requested the enquiry committee to produce these two witnesses and the committee permitted the same. It is after this permission granted by the committee on 30.7.1992, these two witnesses, who were not listed in the charge-sheet, were examined. The contents of para 17 of the enquiry report further shows that after completion of the proceedings of 30.7.1992, the copies of statements recorded during the proceedings of enquiry on 30.7.1992 along-with the proceedings of the enquiry committee were sent to the petitioner with a view to afford him one more opportunity to defend his case. It also appears that he was informed that the proceedings have been adjourned to 31.7.1992. Para 18 shows that when the petitioner did not turn up on 31.7.1992 also, the proceedings were closed. Now the question arises as to whether the Committee was justified to record the statement of these two additional witnesses on 30.7.1992 behind the back of the petitioner and after recording their statements only to send a memo to apprise the petitioner and then to call upon to

defend his case ? In the opinion of this court, this procedure adopted by the committee was not justified.

(18) It is true that no specific procedure has been laid down in the standing order of the Company for conducting an enquiry, but on the principles of natural justice, the committee was not justified in recording the statements of these additional witnesses, who were not mentioned in the charge sheet, behind the back of the petitioner. If we look into the provisions in this regard in other statutory rules prevailing in this State as well as in the State of M.P., for example, **M.P. Civil Services (Classification, Control and Appeal) Rules 1966**, which is applicable in case of Government Servants, it would appear that while giving such provisions in rules, the interest of the employee has always been protected. In the said Rules, referred to above, rule 15 deals about such situation. It provides that if the enquiring authority in his discretion allows the presenting officer to produce evidence not included in the list given to the Government Servant or any new evidence is called or a witness is recalled or reexamined, then in such case, the Government servant shall be entitled to have if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for 3 clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the enquiry is adjourned. It further provides that in such a situation the enquiring authority shall give the government servant an opportunity of inspecting such documents before they are taken on record. Thereafter, the

enquiring authority may also allow the government servant to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice. The underlying principle in this rule seems to be that nothing can be taken as a surprise and if a new evidence is allowed to be adduced, the delinquent shall be given full opportunity to rebut the same and the interest of the employee is protected and the principles of natural justice are not violated. In the instant case, if the committee was of the opinion that these additional witnesses are to be allowed for the examination, then it was incumbent upon the committee to adjourn the enquiry and issue a notice to the petitioner alongwith the list of witnesses before recording their evidence so that the petitioner may have a knowledge about the new evidence to be used against him and he may have an opportunity to cross examine those witnesses. Only sending a memo alongwith the copies of statements already recorded by the Committee was a mere formality by the Committee, because nothing remains for the petitioner after their examination. Though the petitioner, who left the enquiry on 29.7.1992, even on his own fault, was having no knowledge of the fact that two more new witnesses were going to be examined on any subsequent date. Non-appraisal of the petitioner about taking additional evidence, and taking additional evidence ex-parte behind his back, violates the principles of natural justice. Not only this, if we examine the statement of D. Umesh Bhatt recorded in the presence of the petitioner on 29.7.1992, it would appear that the petitioner was not given any opportunity to cross examine this witness. His

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statement has been filed as Annexure P-4 which runs from page 5 onwards in the proceedings of the said date and ends at page 7, but it has not been endorsed in his statement as to whether the petitioner was called upon to cross examine him and he has, in fact, cross examined the said witness or refused to cross examine him. Page 8 of this annexure shows that after finishing the examination of Shri D. Umesh Bhatt, the petitioner had filed his objection regarding disallowing his questions during the cross examination of Shri P. Pawana Murthy held on this day which was ultimately decided by the Committee but it was nowhere mentioned that either the petitioner was called to cross examine Shri D. Umesh Bhatt or he has refused to cross examine this witness. No endorsement of any such nature is there at all. Therefore, the fact remains that though the petitioner has participated in the examination of D. Umesh Bhatt on 29.7.1992, he was not given opportunity to cross examine this witness and thereafter, his application (Annexure P-10) for disallowing the questions in the cross examination of Pawan Murthy was rejected and the petitioner walked out the meeting of the enquiry committee and did not turn up on the subsequent date on which the Committee exparte allowed two additional witnesses not cited in the charge sheet and their examination was conducted behind his back.

(19) I have already held that the petitioner has shown his willful non-cooperation in the enquiry after 29.7.1992, but when the new witnesses were cited by the presenting officer in absence of the

petitioner and were allowed by the enquiry committee then a fresh notice to the petitioner was required to be issued by the committee before conducting examination of these witnesses. If the same has not been done, it amounts to violation of principles of natural justice and it has prejudiced the case of the petitioner. In the opinion of this court after proceeding ex-parte due to absence of petitioner and subsequently allowing the request for adducing the additional evidence strange to the proceedings and not giving notice to the other side and proceeding with the enquiry further, were contrary to the basic concept of principles of natural justice and the enquiry vitiates on this count.

(20) Now coming to the last question raised by the petitioner that since the petitioner has been acquitted in the criminal case, he should also be exonerated from this enquiry, I am not inclined to accept this contention. It is settled law that in a disciplinary enquiry a conclusion different from that arrived at by a criminal court may be arrived at. The strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceedings. The scope of these two proceedings is different and they can also be continued independently. The Apex Court held that the basis for this proposition is that the proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff. The standard of proof

required in those proceedings is also different from that required in criminal case. While in departmental proceedings, the standard of proof is one of the preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. Please see (1999) 3 SCC 679 (Capt. M. Paul Anthony -Vs- Bharat Gold Mines Ltd. and another) and (2004) 6 SCC 482 (Allahabad District Cooperative Bank Ltd., Allahabad -Vs- Vidhya Varidh Mishra). In view of the above, this ground is not available to the petitioner.

(21) In conclusion, since I have held the proceedings of the departmental enquiry as vitiated for non-compliance of the principles of natural justice on the ground that some new witnesses were proposed and allowed to be examined behind the back of the petitioner without informing the petitioner, the result is that the impugned order of punishment dated 29.9.1992 and the appellate order dated 16.10.1998 are set aside. The consequence of setting aside the orders shall follow. The petition is allowed. However, there shall be no order as to the costs.

Sd/-
Sunil Kumar Sinha
Judge

16.08.2005